

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LONDON BARAJONA,

Plaintiff,

-against-

JAMES SIMPSON; UC 323; GENA JONAS; JOHNNIE  
ROSARIO; MARICELA GALINDEZ; ABDIEL  
ANDERSON; DARYL MELHADO; JOSE LIZARDO  
and JOHN and JANE DOE 1-10, individually and in their  
official capacities (the names John Doe being fictitious, as  
the true names are presently unknown),

Defendants.  
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**PLAINTIFF'S FIRST  
AMENDED COMPLAINT  
AND JURY DEMAND**

Docket No.  
15-cv-9413

ECF CASE

Plaintiff London Barajona, by his attorney Cary London, Esq., of London Indusi LLP, for  
his complaint against Defendants alleges as follows:

**PRELIMINARY STATEMENT**

1. This is a civil rights action in which Plaintiff seeks relief through 42 U.S.C. §1983 and  
42 U.S. §1988 for the violation of his civil rights protected by the Fourth and Fourteenth  
Amendments of the United States Constitution.

2. The claim arises from a July 4, 2015 incident in which Defendants, acting under color  
of state law, unlawfully stopped and arrested Mr. Barajona without probable cause. Defendants  
unlawfully tackled Plaintiff and threw him to the ground, causing physical injury. Mr. Barajona  
initially spent approximately 25 hours unlawfully in police custody. After multiple court  
appearances, Mr. Barajona's case was dismissed outright.

3. Plaintiff seeks monetary damages (compensatory and punitive) against Defendants, as well as an award of costs and attorneys' fees, and such other and further relief as the Court deems just and proper.

### **JURISDICTION**

4. This action arises under the Fourth and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. §1983 and §1988.

5. The jurisdiction of this court is predicated upon 28 U.S.C. §§ 1331 and 1343(a) (3) and (4).

### **VENUE**

6. Venue is laid within the Southern District of New York in that a substantial part of the events giving rise to the claim occurred within the boundaries of the Southern District. 28 U.S.C. § 1391 (b).

### **PARTIES**

7. Plaintiff London Barajona ("Mr. Barajona") resided at all times here relevant in Bronx County, City and State of New York. Mr. Barajona is a Sophomore at Monroe College.

8. Defendant James Simpson, Shield No. 2444 ("Simpson") was, at all times here relevant, a detective employed by the NYPD and as such was acting in the capacity of an agent, servant and employee of the City of New York. Defendant Simpson was, at the time relevant herein, a Detective under Shield # 2444 of Narcotics Borough Bronx. Defendant Simpson is sued in his individual capacity.

9. Defendant UC 323, Shield No. 323 ("UC 323") was, at all times here relevant, a police officer employed by the NYPD and as such was acting in the capacity of an agent, servant and employee of the City of New York. Defendant UC 323 was, at the time relevant herein, a police

officer under Shield # 323 of Narcotics Borough Bronx. Defendant UC 323 is sued in his individual capacity.

10. Defendant Gena Jonas, Shield No. 4996 (“Jonas”) was, at all times here relevant, a police officer employed by the NYPD and as such was acting in the capacity of an agent, servant and employee of the City of New York. Defendant Jonas was, at the time relevant herein, a police officer under Shield # 4996 of Narcotics Borough Bronx. Defendant Jonas is sued in her individual capacity.

11. Defendant Johnnie Rosario, Shield No. 4633 (“Rosario”) was, at all times here relevant, a police officer employed by the NYPD and as such was acting in the capacity of an agent, servant and employee of the City of New York. Defendant Rosario was, at the time relevant herein, a police officer under Shield # 4633 of Narcotics Borough Bronx. Defendant Rosario is sued in his individual capacity.

12. Defendant Maricela Galindez, Shield No. 2821 (“Galindez”) was, at all times here relevant, a police officer employed by the NYPD and as such was acting in the capacity of an agent, servant and employee of the City of New York. Defendant Galindez was, at the time relevant herein, a police officer under Shield # 2821 of Narcotics Borough Bronx. Defendant Galindez is sued in her individual capacity.

13. Defendant Abdiel Anderson, Shield No. 1429 (“Anderson”) was, at all times here relevant, a police officer employed by the NYPD and as such was acting in the capacity of an agent, servant and employee of the City of New York. Defendant Anderson was, at the time relevant herein, a police officer under Shield # 1429 of Narcotics Borough Bronx. Defendant Anderson is sued in his individual capacity.

14. Defendant Daryl Melhado, Shield No. 8260 (“Melhado”) was, at all times here

relevant, a police officer employed by the NYPD and as such was acting in the capacity of an agent, servant and employee of the City of New York. Defendant Melhado was, at the time relevant herein, a police officer under Shield # 8260 of the 25<sup>th</sup> Precinct. Defendant Melhado is sued in his individual capacity

15. Defendant Jose Lizardo, Shield No. 10500 (“Lizardo”) was, at all times here relevant, a police officer employed by the NYPD and as such was acting in the capacity of an agent, servant and employee of the City of New York. Defendant Lizardo was, at the time relevant herein, a police officer under Shield # 10500 of Narcotics Borough Bronx. Defendant Lizardo is sued in his individual capacity

16. At all times relevant Defendants John and Jane Doe 1 through 10 were police officers, detectives, supervisors, policy makers and/or officials employed by the NYPD. At this time, Plaintiff does not know the real names and/or shield number of Defendants John and Jane Doe 1 through 10.

17. At all times relevant herein, Defendants John and Jane Doe 1 through 10 were acting as agents, servants and employees of the City of New York and the NYPD. Defendants John and Jane Doe 1 through 10 are sued in their individual and official capacities.

18. At all times here mentioned Defendants were acting under color of state law, to wit, under color of the statutes, ordinances, regulations, policies, customs and usages of the City and State of New York.

### **FACTUAL CHARGES**

19. On July 4, 2015, at approximately 12:00 a.m., Mr. Barajona was walking into his apartment building at 394 East 194<sup>th</sup> Street in Bronx County, New York.

20. Mr. Barajona was not committing any crime or violating any law or local ordinance.

21. The Defendants, including Defendants Simpson, UC 323, Jonas, Rosario, Galindez, Anderson, Melhado, and Lizardo, unlawfully stopped Mr. Barajona on 194<sup>th</sup> Street in Bronx, New York.

22. The Defendants did not observe Mr. Barajona commit any crime or infraction.

23. Defendants, including Simpson, UC 323, Jonas, Rosario, Galindez, Anderson, Melhado, and Lizardo, told Mr. Barajona to put his hands behind his back.

24. Mr. Barajona obeyed the Defendants' order and put his hands behind his back.

25. Defendants, including Simpson, UC 323, Jonas, Rosario, Galindez, Anderson, Melhado, and Lizardo, unlawfully grabbed Mr. Barajona and threw him against a metal gate, causing injury to his back.

26. Defendants, including Defendants Simpson, UC 323, Jonas, Rosario, Galindez, Anderson, Melhado, and Lizardo, unlawfully grabbed Mr. Barajona's arms and pulled them back aggressively, placing handcuffs on Mr. Barajona.

27. Defendants did not have probable cause or reasonable suspicion to detain or arrest Mr. Barajona.

28. Mr. Barajona did not resist arrest.

29. Defendants, including Defendants Simpson, UC 323, Jonas, Rosario, Galindez, Anderson, Melhado, and Lizardo, then tackled Mr. Barajona, while handcuffed, and threw him to the ground, causing injury to Plaintiff's left hip-femur.

30. Plaintiff's father, Leeroy Barajona, came outside of his apartment to ask what was going on.

31. Defendants told Leeroy Barajona to stand back.

32. Leeroy Barajona obeyed Defendants orders and stood back.

33. Defendants, including Defendants Simpson, UC 323, Jonas, Rosario, Galindez, Anderson, Melhado, and Lizardo, kned Plaintiff in the neck and shoulder while Plaintiff was handcuffed and on the concrete ground.

34. Defendants, including Defendants Simpson, UC 323, Jonas, Rosario, Galindez, Anderson, Melhado, and Lizardo, dragged Mr. Barajona across the concrete floor, causing injury to his wrists.

35. Defendants, including Defendants Simpson, UC 323, Jonas, Rosario, Galindez, Anderson, Melhado, and Lizardo, searched Mr. Barajona's person without his authority or permission.

36. No contraband or anything of illegality was found on Mr. Barajona.

37. Defendants, including Defendants Simpson, UC 323, Jonas, Rosario, Galindez, Anderson, Melhado, and Lizardo, placed Mr. Barajona under arrest and transported him to the 52<sup>nd</sup> Precinct.

38. While at the precinct, Plaintiff repeatedly asked for medical attention for his injuries, but was denied access to medical treatment.

39. Defendants, including Defendants Simpson, UC 323, Jonas, Rosario, Galindez, Anderson, Melhado, and Lizardo, conveyed false information to prosecutors in order to have Mr. Barajona prosecuted for Criminal Sale of Marijuana and other related charges.

40. Defendants, including Defendants Simpson, UC 323, Jonas, Rosario, Galindez, Anderson, Melhado, and Lizardo, prepared false sworn affidavits and false police reports relating to Mr. Barajona's arrest.

41. Mr. Barajona was unlawfully held in police custody for approximately 25 hours before being arraigned on those charges.

42. At arraignments, the Judge released Mr. Barajona on his own recognizance, and the matter was adjourned.

43. After multiple court appearances, Mr. Barajona's case was dismissed outright by the Judge.

44. After Mr. Barajona was released from custody, he went to Montefiore hospital for treatment for his injuries.

45. Mr. Barajona was treated for injuries to his left hip-femur, injuries to his wrist, and injuries to his back and neck.

46. At all times relevant hereto, Defendants were involved in the decision to arrest Mr. Barajona without probable cause or failed to intervene in the actions of his fellow officers when he observed them arresting Mr. Barajona without probable cause.

47. During all of the events described, Defendants acted maliciously, willfully, knowingly and with the specific intent to injure Mr. Barajona and violate his civil rights.

48. As a direct and proximate result of the acts of Defendants, Mr. Barajona suffered the following injuries and damages: violation of his rights pursuant to the Fourth and Fourteenth Amendments of the United States Constitution, physical pain and suffering, emotional trauma and suffering, including fear, embarrassment, humiliation, emotional distress, frustration, extreme inconvenience, anxiety, and loss of liberty.

**FIRST CAUSE OF ACTION**

Unlawful Stop and Search

42 U.S.C. § 1983 Against Individual Defendants

49. The above paragraphs are here incorporated by reference as though fully set forth.

50. Defendants violated the Fourth and Fourteenth Amendments because they stopped and searched Plaintiffs without reasonable suspicion.

51. As a direct and proximate result of this unlawful conduct, Plaintiffs sustained the damages herein before alleged.

**SECOND CAUSE OF ACTION**

False Arrest and False Imprisonment Under  
42 U.S.C. § 1983 Against Individual Defendants

52. The above paragraphs are here incorporated by reference as though fully set forth.

53. The Defendants violated the Fourth and Fourteenth Amendments to the U.S. Constitution by wrongfully and illegally arresting, detaining and imprisoning Plaintiff.

54. The wrongful, unjustifiable, and unlawful apprehension, arrest, detention, and imprisonment of Plaintiff was carried out without a valid warrant, without Plaintiff's consent, and without probable cause or reasonable suspicion.

55. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

**THIRD CAUSE OF ACTION**

Malicious Prosecution Under  
42 U.S.C. § 1983 Against Individual Defendants

56. The above paragraphs are here incorporated by reference as though fully set forth.

57. By their conduct, as described herein, Defendants are liable to Plaintiff for the violation of his constitutional right to be free from malicious prosecution under the Fourth and Fourteenth Amendments to the United States Constitution.

58. Defendants, acting with malice, initiated a prosecution against Plaintiff and caused him to be prosecuted.

59. The prosecution by Defendants of Plaintiff constituted malicious prosecution in that there was no basis for Plaintiff's arrest, yet Defendants continued with the prosecution, which was resolved in Plaintiff's favor.



60. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

**FOURTH CAUSE OF ACTION**

Denial of Right to Fair Trial Under  
42 U.S.C. § 1983 Against Individual Defendants

61. The above paragraphs are here incorporated by reference as though fully set forth.

62. The individual Defendants created false evidence against Plaintiff, to wit, sworn documents and testimony alleging that Mr. Barajona sold drugs.

63. The individual Defendants forwarded false evidence to prosecutors in the Bronx County District Attorney's office.

64. In creating false evidence against Plaintiff, and in forwarding false information to prosecutors, the individual Defendants violated Plaintiff's right to a fair trial under the Due Process Clause of the Fourth and Fourteenth Amendments of the United States Constitution.

65. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

**FIFTH CAUSE OF ACTION**

Failure to Intervene Under  
42 U.S.C. § 1983 Against Individual Defendants

66. The above paragraphs are here incorporated by reference as though fully set forth.

67. Those Defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity to prevent such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

68. Accordingly, the Defendants who failed to intervene violated the Fourth and Fourteenth Amendments.

69. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages

hereinbefore alleged.

**SIXTH CAUSE OF ACTION**

Excessive Force Under

42 U.S.C. § 1983

70. The above paragraphs are here incorporated by reference as though fully set forth.

71. The individual Defendants used excessive, unreasonable and unnecessary force with plaintiff.

72. The defendants violated the Fourth and Fourteenth Amendments because they used unreasonable force on the plaintiff without consent.

73. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

**SEVENTH CAUSE OF ACTION**

Deliberate Indifference to Medical Needs Under

42 U.S.C. § 1983 Against Individual Defendants

74. The above paragraphs are here incorporated by reference as though fully set forth.

75. At the time of Plaintiff's arrest on July 4, 2015, the individual Defendants were aware of a risk to Plaintiff's safety and a need for medical care and failed to act in deliberate indifference to Plaintiff's needs.

76. Accordingly, Defendants violated the Fourteenth Amendment because they acted with deliberate indifference to Plaintiff's medical needs and safety.

77. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

**WHEREFORE**, Plaintiff respectfully requests judgment against Defendants, jointly and severally, as follows:

a) In favor of Plaintiff in an amount to be determined by a jury for each of Plaintiff's

- causes of action;
- b) Awarding Plaintiff punitive damages in an amount to be determined by a jury;
  - c) Awarding Plaintiff compensatory and special damages in an amount to be determined by a jury;
  - d) Awarding Plaintiff reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and
  - e) Granting such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: June 28, 2016  
Brooklyn, New York

Respectfully submitted,

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*/s/ Cary London*  
*Cary London, Esq.*  
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